

# Senate Study Bill 3148

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
PUBLIC SAFETY BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act concerning alcoholic beverages by establishing criminal  
2 and civil liability for providing alcoholic beverages to  
3 persons under legal age, providing for an identification  
4 number on kegs of beer, and making penalties applicable.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 5373XD 81  
7 ec/je/5

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1 1 Section 1. Section 123.47, subsection 1, Code Supplement  
1 2 2005, is amended to read as follows:  
1 3 1. a. A person shall not sell, give, or otherwise supply  
1 4 alcoholic liquor, wine, or beer to any person knowing or  
1 5 having reasonable cause to believe that person to be under  
1 6 legal age.  
1 7 b. A person who is the owner, lessee, or who has control  
1 8 of property that is not a licensed premises shall not permit  
1 9 any person, knowing or having reasonable cause to believe the  
1 10 person to be under legal age, to consume or possess on such  
1 11 property any alcoholic liquor, wine, or beer.  
1 12 Sec. 2. Section 123.47, subsection 4, Code Supplement  
1 13 2005, is amended to read as follows:  
1 14 4. Except as otherwise provided in subsections 5 and 6, a  
1 15 person who is of legal age, other than a licensee or  
1 16 permittee, who ~~sells, gives, or otherwise supplies alcoholic~~  
1 17 ~~liquor, wine, or beer to a person who is under legal age in~~  
1 18 ~~violation of this section~~ violates subsection 1 commits a  
1 19 serious misdemeanor punishable by a minimum fine of five  
1 20 hundred dollars.  
1 21 Sec. 3. Section 123.47, subsection 5, Code Supplement  
1 22 2005, is amended to read as follows:  
1 23 5. A person who is of legal age, other than a licensee or  
1 24 permittee, who sells, gives, or otherwise supplies alcoholic  
1 25 liquor, wine, or beer to a person who is under legal age in  
1 26 violation of ~~this section~~ subsection 1, paragraph "a", which  
1 27 results in serious injury to any person commits an aggravated  
1 28 misdemeanor.  
1 29 Sec. 4. Section 123.47, subsection 6, Code Supplement  
1 30 2005, is amended to read as follows:  
1 31 6. A person who is of legal age, other than a licensee or  
1 32 permittee, who sells, gives, or otherwise supplies alcoholic  
1 33 liquor, wine, or beer to a person who is under legal age in  
1 34 violation of ~~this section~~ subsection 1, paragraph "a", which  
1 35 results in the death of any person commits a class "D" felony.  
2 1 Sec. 5. Section 123.50, subsection 1, Code 2005, is  
2 2 amended to read as follows:  
2 3 1. Any person who violates any of the provisions of  
2 4 section 123.49, except subsection 2, paragraph "h", or who  
2 5 fails to affix upon sale, defaces, or fails to record a keg  
2 6 identification sticker or produce a record of keg  
2 7 identification stickers pursuant to section 123.138, shall be  
2 8 guilty of a simple misdemeanor. A person who violates section  
2 9 123.49, subsection 2, paragraph "h", commits a simple  
2 10 misdemeanor punishable as a scheduled violation under section  
2 11 805.8C, subsection 2.  
2 12 Sec. 6. Section 123.92, unnumbered paragraph 3, Code 2005,  
2 13 is amended to read as follows:  
2 14 Notwithstanding section 123.49, subsection 1, any person  
2 15 who is injured in person or property or means of support by an

2 16 intoxicated person who is under legal age or resulting from  
2 17 the intoxication of a person who is under legal age, has a  
2 18 right of action for all damages actually sustained, severally  
2 19 or jointly, against a person who is not a licensee or  
2 20 permittee and who dispensed or gave any beer, wine, or  
2 21 intoxicating liquor to the intoxicated underage person when  
2 22 the nonlicensee or nonpermittee who dispensed or gave the  
2 23 beer, wine, or intoxicating liquor to the underage person knew  
2 24 or should have known the underage person was intoxicated, or  
2 25 who dispensed or gave beer, wine, or intoxicating liquor to  
2 26 the underage person to a point where the nonlicensee or  
2 27 nonpermittee knew or should have known that the underage  
2 28 person would become intoxicated. If the injury was caused by  
2 29 an intoxicated person who is under legal age, a person who is  
2 30 not a licensee or permittee and who dispensed or gave beer,  
2 31 wine, or intoxicating liquor to the underage person may  
2 32 establish as an affirmative defense that the intoxication did  
2 33 not contribute to the injurious action of the underage person.  
2 34 For purposes of this paragraph, "dispensed" or "gave" means  
2 35 the act of physically presenting a receptacle containing beer,  
3 1 wine, or intoxicating liquor to the underage person, or  
3 2 deliberately and knowingly making available a receptacle  
3 3 containing beer, wine, or intoxicating liquor to the underage  
3 4 person with direct knowledge that the underage person intends  
3 5 to consume the beer, wine, or other intoxicating liquor, but  
3 6 without physically presenting such receptacle to the underage  
3 7 person, whose actions or intoxication results in the  
3 8 sustaining of damages by another person. However, a person  
3 9 who dispenses or gives beer, wine, or intoxicating liquor to  
3 10 an underage person, or who deliberately and knowingly makes  
3 11 available a receptacle containing beer, wine, or intoxicating  
3 12 liquor to an underage person, shall only be liable for any  
3 13 damages if the person knew or should have known that the  
3 14 underage person was under legal age.

3 15 Sec. 7. Section 123.138, Code 2005, is amended to read as  
3 16 follows:

3 17 123.138 BOOKS OF ACCOUNT REQUIRED.

3 18 1. Each class "A" or special class "A" permittee shall  
3 19 keep proper books of account and records showing the amount of  
3 20 beer sold by the permittee, and these books of account shall  
3 21 be at all times open to inspection by the administrator and to  
3 22 other persons pursuant to section 123.30, subsection 1. Each  
3 23 class "B" and class "C" permittee shall keep proper books of  
3 24 account and records showing each purchase of beer made by the  
3 25 permittee, and the date and the amount of each purchase and  
3 26 the name of the person from whom each purchase was made, which  
3 27 books of account and records shall be open to inspection  
3 28 pursuant to section 123.30, subsection 1, during normal  
3 29 business hours of the permittee.

3 30 2. Each class "B", "C", or special class "C" liquor  
3 31 control licensee and class "B" or "C" beer permittee who sells  
3 32 beer for off-premises consumption shall affix to each keg of  
3 33 beer an identification sticker provided by the administrator.  
3 34 For the purposes of this section, "keg" means all durable and  
3 35 disposable containers with a liquid capacity of five gallons  
4 1 or more. Each class "B", "C", or special class "C" liquor  
4 2 control licensee and class "B" or "C" beer permittee shall  
4 3 also keep a record of the identification sticker number of  
4 4 each keg of beer sold by the licensee or permittee with the  
4 5 name and address of the purchaser and the number of the  
4 6 purchaser's driver's license, nonoperator's identification  
4 7 card, or military identification card, if the military  
4 8 identification card contains a picture and signature. This  
4 9 information shall be retained by the licensee or permittee for  
4 10 a minimum of ninety days. The records kept pursuant to this  
4 11 section shall be available for inspection by any law  
4 12 enforcement officer during normal business hours.

4 13 3. The division shall provide the keg identification  
4 14 stickers described in subsection 2. Each sticker shall  
4 15 contain a number and the following statement: "It is unlawful  
4 16 to sell, give, or otherwise supply any alcoholic beverage,  
4 17 wine, or beer to any person under legal age. Any person who  
4 18 defaces this sticker shall be guilty of criminal mischief  
4 19 punishable pursuant to section 716.6 and shall cause the  
4 20 forfeiture of any deposit, if applicable." The identification  
4 21 sticker shall be placed on the keg at the time of retail sale.  
4 22 The licensee or permittee shall purchase the stickers referred  
4 23 to in this section from the division and shall remit to the  
4 24 division deposits forfeited pursuant to this subsection due to  
4 25 defacement. The cost of the stickers to licensees and  
4 26 permittees shall not exceed the division's cost of producing

4 27 and distributing the stickers. The moneys collected by the  
4 28 division relating to the sale of stickers and forfeited  
4 29 deposits shall be credited to the beer and liquor control  
4 30 fund.  
4 31 4. Enforcement of this section shall be implemented  
4 32 uniformly throughout the state. For purposes of uniform  
4 33 implementation, a county or municipality shall not set  
4 34 requirements or establish a penalty which is higher or more  
4 35 stringent than the requirements or penalties enumerated in  
5 1 this section, section 123.50, and section 716.6. The division  
5 2 shall establish by rule procedures relating to the forfeiture  
5 3 and remittance of deposits pursuant to subsection 3.

5 4 EXPLANATION

5 5 This bill concerns alcohol beverage control relating to  
5 6 providing alcohol to underage persons, dram shop liability,  
5 7 and providing keg identification numbers for sales of beer in  
5 8 containers of five gallons or more.

5 9 Code section 123.47 is amended to provide that it shall be  
5 10 unlawful for a person who owns, leases, or has control of  
5 11 property that is not a licensed premises to permit any person,  
5 12 knowing or having reasonable cause to believe the person to be  
5 13 under legal age, to consume or possess on the property any  
5 14 alcoholic liquor, wine, or beer. A violation of this  
5 15 provision would be a serious misdemeanor punishable by a  
5 16 minimum fine of \$500.

5 17 Code section 123.92 is amended to extend civil liability to  
5 18 a person who deliberately and knowingly makes available a  
5 19 receptacle containing beer, wine, or intoxicating liquor to an  
5 20 underage person with direct knowledge that the underage person  
5 21 intends to consume the beer, wine, or other intoxicating  
5 22 liquor and the underage person becomes intoxicated and injures  
5 23 another person. Current law provides that a person must  
5 24 physically present such receptacle to a person under legal age  
5 25 for that person to be liable for injuries caused by that  
5 26 intoxicated underage person.

5 27 The bill provides in Code section 123.138 that specified  
5 28 liquor control licensees and beer permittees who sell beer for  
5 29 off-premises consumption shall affix to each keg of beer an  
5 30 identification sticker provided by the administrator of the  
5 31 alcoholic beverages division of the department of commerce.  
5 32 The bill provides that a "keg" of beer shall refer to all  
5 33 durable and disposable containers with a liquid capacity of  
5 34 five gallons or more.

5 35 The bill also provides that each of the specified licensees  
6 1 and permittees shall keep a record of the identification  
6 2 sticker number of each keg of beer sold by the licensee or  
6 3 permittee with the name and address of the purchaser and the  
6 4 number of the purchaser's driver's license, nonoperator's  
6 5 identification card, or military identification card. The  
6 6 bill provides that this information shall be retained for a  
6 7 minimum of 90 days, and shall be available for inspection by  
6 8 any law enforcement officer during normal business hours. The  
6 9 bill provides that the identification sticker shall be affixed  
6 10 to the keg at the time of the retail sale.

6 11 The bill provides that the alcoholic beverages division  
6 12 shall provide the keg identification stickers, and that each  
6 13 sticker shall display an identification number and a statement  
6 14 that it is unlawful to sell, give, or otherwise supply any  
6 15 alcoholic beverage, wine, or beer to any person under legal  
6 16 age, and that any person who defaces the sticker shall be  
6 17 guilty of criminal mischief and shall forfeit a deposit, if  
6 18 applicable. The bill provides that the licensee or permittee  
6 19 shall purchase the stickers from the division, that the  
6 20 licensee or permittee shall be authorized to retain a  
6 21 forfeited deposit, that the cost of the stickers shall not  
6 22 exceed the division's production and distribution cost, and  
6 23 that the moneys collected by the division from the sale of the  
6 24 stickers or from forfeited deposits shall be credited to the  
6 25 beer and liquor control fund.

6 26 The bill provides that penalty provisions contained in Code  
6 27 section 123.50, regarding violations being punishable as a  
6 28 simple misdemeanor, shall be applicable to a licensee or  
6 29 permittee who fails to affix upon sale, defaces, or fails to  
6 30 record a keg identification sticker or produce a record of keg  
6 31 identification stickers. The bill provides that the  
6 32 provisions of the bill shall be enforced and implemented  
6 33 uniformly across the state, and that a county or municipality  
6 34 shall not set requirements or establish a penalty which is  
6 35 higher or more stringent than the requirements or penalty  
7 1 provisions made applicable in Code section 123.50 or 716.6.

